IN THE HIGH COURT OF JUDICATURE AT MUMBAI

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODG.) NO. 1375 OF 2007

Maharashtra Suraksha Rakshak &
General Kamgar Union. ... ... Petitioner.

Versus

The Security Guards Board for Greater
Mumbai & Thane District & Others. .. Respondents.

ALONG WITH

WRIT PETITION (LODG.) NO. 1376 OF 2007
WRIT PETITION (LODG.) NO. 1377 OF 2007
WRIT PETITION (LODG.) NO. 1406 OF 2007
WRIT PETITION (LODG.) NO. 1409 OF 2007
WRIT PETITION (LODG.) NO. 1418 OF 2007
WRIT PETITION (LODG.) NO. 1596 OF 2007
WRIT PETITION (LODG.) NO. 1622 OF 2007
WRIT PETITION NO. 304 OF 2006
WRIT PETITION NO. 2410 OF 2006
WRIT PETITION NO. 743 OF 2007
WRIT PETITION NO. 2341 OF 2005
WRIT PETITION NO. 2861 OF 2005
WRIT PETITION NO. 2978 OF 2005
WRIT PETITION NO. 359 OF 2005
WRIT PETITION NO. 674 OF 2004
WRIT PETITION NO. 369 OF 2003
WRIT PETITION NO. 500 OF 2005
WRIT PETITION NO. 859 OF 2005
WRIT PETITION NO. 1312 OF 2005
WRIT PETITION NO. 1141 OF 2006
WRIT PETITION NO. 3283 OF 2004
WRIT PETITION NO. 662 OF 2003
WRIT PETITION NO. 3049 OF 2003

ALONG WITH

CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9073 OF 2003
AND
WRIT PETITION NO. 2698 OF 2004

Ms.Vaishali Bhilare for the Petitioners in W.P. Nos.(L)1375/07; (L)1376/07; (L)1377/07 and (L) 1418/07.

Mr.Susheel Mahadeshware for Petitioners in W.P. Nos.369/03; 662/03; 3049/03; 674/04; 3283/04;359/05; 859/05; AS 5467/05; 1312/05; 2341/05; 2978/05 and 1141/06.

Ms.Ranjana Todankar for the Petitioners in W.P. Nos. 500/05; 2861/05; 304/06; 2410/06; 743/07; 304/06; (L) 1406/07; (L)1409/07; (L)1596/07 and (L)1622/07.

Ms. L. S. Desai for Respondent No.1 in W.P.Nos.(L) 1375/07; 369/03; 662/03; 3049/03; 674/04; 304/06; 743/07; (L)1376/07; (L)1406/07; (L)1409/07; (L)1418/07; (L)1596/07 and (L)1622/07 and for Respondent No.2 in W.P. Nos.3283/04; 359/05; 1141/06 and 2410/06.

Mr. M.S.Topkar for Respondent No.1 in W.P. 2341/05 and for Respondent No.2 in W.P.Nos.859/05; AS 5467/05; 1312/05; 2861/05 and 304/06.

Mr. I. R. Kulkarni for Respondent No.2 in W.P.(L) 1375/07.

Mr. P.K.Rele, Sr. Advocate with Mr. Piyush Shah for Respondent No.2 in W.P.Nos.369/03; 662/03; 3049/03; 2410/06 and 2861/05.

Mr. S.K.Talsania, Sr.Advdocate i/by M/s.Sanjay Udeshi & Co., for Respondent No.2 in W.P. No.674/04.

Mr.Prashanat Karandi for Respondent No.3 in W.P.674/04.

Mr. G.M.Joshi for Respondent No.3 in W.P.No.3283/04.

Mr.S.N.Acharya for Respondent No.4 in W.P.3283/04.

Mr.R.S.Pai i/by M/s.Sanjay Udeshi & Co., for Respondent No.5 in W.P.3283/04 and for Respondent No.6 in W.P. 500/05.

Mr.Anilkumar K.Joshi for Respondent Nos.3 & 4 in W.P. 359/05.

Mr.Anilkumar K. Patil for Respondent No.4 in ASWP 5467/05.

Mr. R.M.Joshi for Respondent No.2 in WP 2341/05.

Ms.Sonia Sunil i/by M/s.Beekay Legal for Respondent No.2 in WP Nos. 2341/05; 304/06; 2410/06 and for Respondent No.3 in WP Nos.2861/05; 2410/06; 304/06 and 2978/05.
Mr. J.S.Saluka i/by M/s.M.V.Kini & Co. for Respondent No.2 in W.P. 2978/05.

Mr. A.D.Shetty with Ms.Rita Joshi for Respondent No.5 in W.P. 2978/05.

Mr. R.K.Joshi for Respondent No.4 in W.P.2978/05.

Mr.Sanjay Udeshi for Respondent No.3 in WP 1141/06.

Mr.A.V.Jalisatgi for Respondent No.4 in WP 1141/06.

Mr. S.P.Singh for Respondent No.2 in WP 1622/07.

Mr. A.A.Kumbhakoni, Associate Advocate General with Mr.P.M.Mokashi, AGP for the State.

CORAM : SWATANTER KUMAR, C.J. &

DR.D.Y.CHANDRACHUD, J.

DATED : 23RD AUGUST, 2007

P. C.:

By this order we would dispose of all the above writ petitions as common reliefs have been claimed in them, on somewhat similar facts.

2. Most of the petitioners are Trade Unions and are pursuing the cause of their members. It is the

common case that respondent No.1 has been constituted under Section 6 of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 (for short ”the Act”) for discharging various functions specified in the Act and to ensure proper registration, deployment of security guards as well as the employers' providing such services.

3. In Civil Writ Petition (Lodging) No. 1375 of 2007, the petitioner is a trade union, while respondent No.2 is stated to be the principal employer, as defined under the Act. Respondent No.3 is stated to be a private contractor. Members of the petitioner union are stated to be working / employed by respondent No.2, which is not registered with the Security Board. As their principal employer, respondent No.2 is responsible for compliance with the provisions of the Act as they are employing members of the petitioner for watch and ward duty. Respondent No.3 is supplying security guards to various establishments and also to respondent No.2.

4. The Security Board issued a Circular on 22nd February, 2006, which was made effective from 1st January, 2006 for a period of two years, and the details of the revision in wages and allowances of the security guards, security officers, etc. were given in that circular, which is annexed as Exhibit “E” to the writ petition. The security guards are being paid salary much below the rate fixed by the Board and are not even given conditions of service as stipulated therein. Over-time, weekly off, etc. are being totally not adhered to by respondent Nos.2 and 3. Furthermore, respondent No.3 maintained, according to the petitioner, monthly attendance record of security guards, including for the months of April / May 2007. Despite specific obligations, the said respondent does not provide to the members of the petitioner union benefits of Provident Fund, Employees’ State Insurance, Gratuity and weekly off, etc. The petitioners claim that they are entitled to these benefits, which they are not receiving and the conditions applicable as per the Circular and Scheme declared by the Board are being flouted by the respondents.

5. The State Government vide Resolution dated 19th June, 2006 cancelled its earlier order dated 30th May, 2002 wherein requirement of 240 days continuous attendance for the security guards with a principal employer was mandatory for getting registration with the Security Board. By the amended circular, it is not only obligatory but mandatory upon the said respondent No.2 to get registered with respondent No.1 Board. To get themselves registered with the Board and even private security guards, they can approach the respondent Board for registration but registered security guard is an essential condition for the principal employer to employ the person on duty.

6. It is pleaded by the petitioner that if the principal employers are allowed to engage contract labour to unregistered employer or security guards for security work purposes, the entire purpose of the Act and the Scheme shall stand defeated. The members of the petitioner union were also apprehending termination of their services and they annexed the list of their members at Exhibit “A” to the writ petition. They also claim to have approached the Board but they have not

been registered as yet. The threat of termination is primarily based on the facts that the said respondents have learnt about filing of an application by the members, stated in exhibit “A” to the writ petition, for registration to the Security Board.

7. While referring to the various writ petitions as well as the judgment of this Court in the case of *Maharashtra Suraksha Rakshak Aghadi v/s Security Guards Board for Greater Bombay and Thane District and Others,* (Civil Writ Petition No. 560 of 2007 decided on 21st June, 2007), the petitioners have tried to justify their prayers. The reliefs sought for by the petitioners in all petitions, except Writ Petition Nos. 359 of 2005, 500 of 2005, 859 of 2005, 1312 of 2005 and 1141 of 2006 are to (i) initiate action against the employer and the private Contractor under Section 42 of the Act, (ii) direct respondent No.1 – Board to register the security guards listed in the Annexures to the petitions, (iii) direct the employer to get itself registered with the Board, and (iv) an injunction restraining the employer and the contractor from terminating the services of the security guards. Vide

notification dated 25th August, 2003, the Government of Maharashtra granted exemption to the employer under Section 23 of the Act. This grant of exemption is challenged by the petitioner in Writ Petition No. 3283 of 2004. The petitioner had earlier impugned the said Notification by filing Civil Writ Petition No. 665 of 2004. However, subsequently, a corrigendum dated 5th July, 2004 was issued. In view of the issuance of the said corrigendum, the said Writ Petition No.665 of 2004 was dismissed as withdrawn by this Court on 6th July, 2004. In Writ Petition Nos. 359 of 2005, 500 of 2005, 859 of 2005, 1312 of 2005 and 1141 of 2006, the petitioners have challenged the notifications of various dates granting exemption under Section 23 of the Act to security guards employed or to be employed by the employer mentioned in the said notifications.

8. We may notice that challenge to the Notification in these various writ petitions is of no consequence as it had been rendered infructuous by the fact that the Notification has already lapsed and even the period indicated in the corrigendum issued to the Notification has also lapsed. Neither it was pressed

before us nor it is necessary for us to go into the merits of the pleas taken in the writ petitions for quashing this notification.

9. In Civil Writ Petition (Lolg.) No. 1375 of 2007, reply has been filed on behalf of respondent Nos.2 and 3, wherein they have denied the averments made in the writ petition and have termed the filing of the writ petition as mischievous. According to respondent No.2, their office is situated at Thane as well as that of respondent No.3. It is stated that they had terminated services of respondent No.3 with effect from 30th June, 2007 and that the attendance registers annexed to the writ petition are forged and fabricated documents. According to respondent No.3, they have taken the similar stand as that of respondent No.2 and have also stated that they do not admit the correctness of the identity cards, etc. relied upon by the petitioner. They have also not admitted that the members shown in Exhibit “A” to the writ petition are in their employment. According to them, the workers settle their dues, surrender the identity cards and go away. Thus, Xerox copies of the identity cards are of

no consequence. Similar stand has been taken in other writ petitions as well. The principal employers have denied the averments made in the writ petitions and have also denied the continuous employment either with the principal employer or with the security agency, through whom they were being engaged.

10. The Civil Writ Petition Nos. 369 of 2003, 3049 of 2003, 662 of 2003,674 of 2004, 3283 of 2004, 2861 of 2005, 304 of 2006, 2410 of 2006, 743 of 2007 and (Lodg.) 1409 of 2007 are the writ petitions where the Banks are respondents and it is stated that the banks are also obliged to get themselves registered and take the registered security guards through the Security Board. The response of the Banks, and particularly the Standard Chartered Bank, is that as per the instructions issued by the Reserve Bank of India as well as the Police Commissioner, they were advised to employ trained personnel or vigilance officer, who has the expertise to detect weapon operation and detection of terrorist. This expertise and capability is not available with every agency and particularly the security guards registered with the

Security Board. This stand taken by the Bank has duly been supported by the arguments canvassed by the learned Counsel appearing for other Banks and as such these cases would be covered by the directions only where the Security Board itself is of the opinion that the demand of security guards of such bank / institution can be adequately looked into and provided for by them.

11. The Security Board has not disputed the position in law and the various circulars issued by it. During the course of argument, their main stand was that either the principal employer has not applied for registration or, in most of the cases, even the members of the trade union have not applied for registration with the Security Board. Wherever they have applied, without waiting for reasonable time, they have filed the present writ petitions in undue haste and in some cases even after few days. According to them, the writ petitions, in such cases, should be dismissed and the petitioners should be directed to take due course provided under the provisions of the statute.

12. A Division Bench of this Court in the case of *Maharashtra Suraksha Rakshak Aghadi (supra)* has discussed the position of law and accepted the plea of the petitioners that they have a right to apply to the Board for registration and, after decision on their applications, consequently claim various benefits in accordance with the Scheme and the provisions of the Act. The State has issued circular in exercise of its powers under Section 8(4) of the Act and the directions are contained in the order dated 19th June, 2006 with respect to registration of security guards. The object primarily is to avoid contractual labour and exploitation of security guards by contractors. But the factual controversies raised in the present writ petitions are such which can hardly be gone into by the Court in exercise of its powers under Article 226 of the Constitution of India. The parties have taken plea of forged and fabricated documents. There are disputes with regard to termination of employment. Despite all these, there is statutory obligation upon the Security Guards Board to see that the applications filed before it for registration or for taking penal action against the defaulting person under Section 42 of the Act are

decided. Whether any of its members and/or private security agency are entitled to any exemption, is again a matter which is based on factual matrix and controversy raised on that account. In paragraph 11 of the judgment in the case of *Maharashtra Suraksha Rakshak Aghadi (supra)* the Court has noted similar contentions and issued certain directions. They read as under:

> "11. The Act of 1981 imposes various obligations upon the Board constituted under the provisions of the Act for registration of the employers and/or individual security guards in accordance with the Regulations and the Scheme formulated by the authorities concerned. Various disputes have been raised in these writ petitions including that the writ petitions are prematured in as much as the members of the petitioners had not filed any applications before the Board for their registration in accordance with law. The employers, that is the other private respondents, have still raised various disputes that they have not employed security guards and the persons employed by them are primarily carrying on the work like attendants or persons employed for duties unconnected with the functions to be performed by a security guard. All these disputes can be resolved by determination of factual controversies and keeping in mind what is the actual situation on site where the office and/or factories of the private respondents are situated. These controversies can hardly be resolved by the Court in exercise of its powers under Article 226 of the Constitution of India.

12. Thus, in view of the above discussion, while disposing of these writ petitions, we consider it appropriate to issue the following directions for strict adherence by the concerned parties/authorities.

(i) All the security guards, petitioners in all the petitions or the members of the Sangh or the Unions through whom the present petitions have been filed and who have not already filed applications for their registration with the respondent – Board may file such applications within four weeks from today.

(ii) All the pending applications for registration as security guards filed by the individuals as well as the applications received by the Board under clause (i) shall be dealt with and disposed of by the Board in accordance with the Regulations and policies framed by the Board within six weeks thereafter. Orders so passed by the Board shall be notified, besides copies thereof being sent to the Union or individual workmen who have filed these petitions.

(iii) The employer of members of these petitioners and/or even other employers desirous of getting registered with the respondent – Board for providing of security personnel would be also at liberty to move such applications within four weeks from today and the same shall be considered and disposed of by the Board in accordance with law within six weeks thereafter.

(iv) The Board, through its Officers / Officials, shall duly verify the stand of the private employers that the workmen / security guards are not employed and/or whether the workmen /

security guards employed by them are or not performing the duties of a security guard and shall prepare an inspection report after site visits. Such report would be considered by the authorities concerned for passing an appropriate order.

(v) The individual security guards who are then registered by the Board shall be allocated to such concerns / establishments which are desirous of deploying security guards and/or those security guards who are in employment and are then registered shall be granted all the benefits in terms of the Regulations upon the direction of the Board.

(vi) After completion of the above exercise, the Board shall consider and initiate penal action against the private respondents-employers in accordance with the provisions of clause 42 of the Security Guards Scheme, 2005, and the relevant clause on the date of passing of this order.

(vii) Wherever private respondent – employers are required to apply for registration with the respondent – Board, they shall apply, even if, according to them, the members of the petitioners are not employed strictly as security guards and are employed as attendants or car cleaners, etc. This scheme shall be duly considered by the Board and decided in accordance with law. We also make it clear that while allotting the services of the security guards, the Board will keep in mind the fact that where were they employed at the time or prior to the institution of these writ petitions.

(viii) The process of registration in either case shall be subject to the satisfaction of the eligibility criteria in relation to various factors which are specified under the Regulations or the Security Guards Scheme framed in 2005."

13. We are of the considered view that in the present writ petitions also similar directions should be issued as they would appropriately provide requisite relief and remedy to the parties concerned and would also require respondent No.1 Board to discharge its statutory obligations.

14. Resultantly, we dispose of all these writ petitions with the above directions and the time schedule indicated for compliance in all the directions contained hereinabove shall commence with effect from the date of this order.

Sd/-

(CHIEF JUSTICE)

Sd/-

(DR.D.Y.CHANDRACHUD, J.)